Supreme Court, U. S.
FILED
APR 4 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-1516

PIERRE J. WESSEL,

Appellant,

v.

PENNSYLVANIA STATE BOARD OF LAW EXAMINERS,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

DAVID J. ONTELL
510 Fifth Street, N.W.
Washington, D.C. 20001
Attorney for Appellant.

Washington, D.C. • THIEL PRESS • (202) 638-4521

TABLE OF CONTENTS

(a) OPINIONS BELOW 1

(b) STATEMENT OF GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED 2
(i) Nature of the Proceeding 2
(ii) Final Order 2
(iii) Jurisdiction Statute 2
(iv) Cases Sustaining Jurisdiction 3
(v) Rule in Question 3

(c) QUESTIONS PRESENTED BY THIS APPEAL 4

(d) STATEMENT OF THE CASE 5

RAISING THE FEDERAL QUESTION 9

(e) THE NATURE OF THE CASE AND THE RULINGS BELOW ARE SUCH AS TO BRING THIS CASE WITHIN THE JURISDICTIONAL PROVISIONS RELIED ON AND THE CASES CITED TO SUSTAIN JURISDICTION 11

THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION 14

CONCLUSION 20

CERTIFICATE OF SERVICE 20

APPENDIX:

– Letter from Board to Appellant, dated December 1, 1976 . . . . . 1a

– Letter from Board to Appellant, dated December 16, 1976 . . . . . 2a

– Letter from Supreme Court of Pennsylvania, dated March 15, 1977 . . . . . 3a

– Order, Supreme Court of Pennsylvania, in No. 327, Misc. Docket No. 21, dated October 7, 1977 . . . . . 4a

– Opinion of Board, dated August, 1978 . . . . . 5a

– Letter from Supreme Court of Pennsylvania, dated January 8, 1979 . . . . . 12a

– Notice of Appeal 13a

TABLE OF AUTHORITIES

Cases:

In Re Appeal of Edward M. Murphy II from the Decision of the State Board of Law Examiners, ___ Pa. ___, 393 A.2d 369 (1978). 7

Application of Christy, 362 Pa. 347, 67 A.2d 85, *cert. den. sub nom. Christy v. Conver*, 338 U.S. 869 (1949) 17

Burford v. Sun Oil, 319 U.S. 315 (1943). 19

City of New Orleans v. Duke, 427 U.S. 297 (1976). 18

Doe v. Pringle, 550 F.2d 596 (10th Cir. 1976). 19

Examining Board of Engineers v. Flores de Otero, 426 U.S. 572 (1976) 19

Ginsburg v. Kovrak, 392 Pa. 143, 139 A.2d 889, *appeal dismissed*, 358 U.S. 52 (1958) 17

Graham v. Richardson, 403 U.S. 365 (1971) 19

In re Griffiths, 413 U.S. 717 (1973). 3, 11, 12, 15, 19

Konigsberg v. State Bar, 353 U.S. 252 (1957) 14

Lathrop v. Donohue, 367 U.S. 820 (1961) 3, 12

Mass. Board of Retirement v. Murgia, 427 U.S. 307 (1976) 18

McGinnis v. Royster, 410 U.S. 263 (1973) 18

Moore v. Supreme Court of South Carolina, Supreme Court No. 78-545 13

Murphy v. State Bd. of Law Exam. for Com. of Pa., 429 F. Supp. 16 (E.D. Pa. 1977) 17, 19

Nyquist v. Mauclet, 432 U.S. 1 (1977) 19

Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) 3, 13, 14, 18

Schlesinger v. Wisconsin, 270 U.S. 230 (1926) 3, 12

Cases, continued:

Schware v. Board of Bar Examiners of New Mexico, 353 U.S. 232 (1957) 14

Street v. New York, 394 U.S. 576 (1969) 9

Sugarman v. Dougall, 413 U.S. 634 (1973) 19

In re Summers, 333 U.S. 561 (1945) 15

Vlandis v. Kline, 412 U.S. 441 (1973) 3, 11, 12

Walker v. Kahn, 31 D.C. 620, 86 P.L.J. 173 (1938) 17

Willner v. Committee on Character, 373 U.S. 96 (1963) 15

Constitutional Provisions:

First Amendment 15

Fourteenth Amendment . . . . . *passim*

Statutes:

28 U.S.C. §1257(2) 2, 20

Administrative Agency Law Title 71, §1710.51 7

Rules:

Rule 505, American Bar Association, *Approval of Law Schools: Standards and Rules of Procedure* (1977) 5

Rules Relating to Admission to the Bar of the Supreme Court of Pennsylvania, amended as of January 22, 1976:

Rule 8-C-2 . . . . . *passim*

Rule 14B 7

Rules Relating to Admission to the Bar of the Supreme Court of Pennsylvania, adopted June 6, 1977:

Rule 102 4

Rule 203(2) 4

Rule 205 4

Rule 222 7

Articles:

D.E. Wilkins, "New Federalism in Criminal Procedure: State Court Evasion of the Burger Court", 62 Kentucky Law Journal 421-51 (1974); 63 Kentucky Law Journal 873-94 (1975) 9

Note: "State Constitutional Guarantees as Adequate State Ground: Supreme Court Review and Problems of Federalism," 13 American Criminal Law Review 737-778 (1976) 9

Forward, 86 Harvard Law Review 1 (1972) 18

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No.

PIERRE J. WESSEL,

Appellant,

v.

PENNSYLVANIA STATE BOARD OF LAW EXAMINERS,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

(a) THE OPINIONS BELOW

All opinions in this case are unreported, but are reprinted in Appendix A. They are contained in No. 21, Miscellaneous Docket No. 327 of the Supreme Court of Pennsylvania. The final decision from which we appeal is the order of the Supreme Court of Pennsylvania, dated January 4, 1979, denying Mr. Wessel's appeal from the decision by the Appellee, dated August, 1978. That decision, (also reprinted in Appendix A) was issued after

hearings were conducted by the Board (Appellee)[1] in response to an order by the court dated October 7, 1977 (also reprinted in Appendix A), mandating such hearings, and vacating the court's prior order, dated March 11, 1977, denying his first appeal to the court from refusals of requests to sit for the Pennsylvania Bar Examiniation. Appendix A contains the letters, from the Board, dated December 1 and 16, 1976, denying Mr. Wessel's requests.

(b) STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

(i) The nature of the proceeding is an appeal from the Supreme Court of Pennsylvania denying the Appellant, Mr. Wessel, permission to take the Pennsylvania Bar Examination because he did not comply with Rule 8-C-2 of the Rules Relating to the Admission to the Bar of the Supreme Court of Pennsylvania. That rule required him to have graduated from a school accredited by the American Bar Association. Appellant contended in the lower court that this Rule violated the Fourteenth Amendment "equal protection" and "due process" clauses.

(ii) The date of the final order sought to be reviewed is January 4, 1979. The notice of appeal was filed on March 15, 1979, in the Supreme Court of Pennsylvania.

(iii) The statutory provision conferring on this court jurisdiction of the appeal is Title 28 of the United States Code, Section 1257 (2).

---

[1] This case previously reached this Court on Petition For Writ Of Certiorari, No. 76-1757, filed June 9, 1977. The petition was withdrawn when the respondent (here, Appelle) agreed, under direction of the Supreme Court of Pennsylvania, to grant Mr. Wessel a hearing on the equivalency of his legal education.

(iv) Cases sustaining the jurisdiction are:

a. *In Re Griffiths*, 413 U.S. 717 (1973).
b. *Vlandis v. Kline*, 412 U.S. 441 (1973).
c. *Schlesinger v. Wisconsin*, 270 U.S. 230 (1926).
d. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).
e. *Lathrop v. Donohue*, 367 U.S. 820 (1961).

(v) The rule, the validity of which is attacked, is Rule 8-C-2 of the Rules Relating to Admission To the Bar of the Supreme Court of Pennsylvania. The Rule is found at page 1 of the Rules Relating to Admission to the Bar of the Supreme Court of Pennsylvania, amended as of January 22, 1976. The text of the pertinent part of the Rule is as follows:

> c. To qualify for the bar examination an applicant:
>
> 2. shall have completed the study of law in a law school accredited by the American Bar Association; or shall have acquired a legal education which in the opinion of the State Board is the equivalent.

The rule was modified by the Supreme Court of Pennsylvania in 1976. Appellant was informed by letter, dated December 1, 1976,[2] that a judicial gloss had been added to the above rule:

> The Supreme Court of Pennsylvania has indicated to the State Board of Law Examiners that the "equivalency" rule applies only to graduates of law schools which are not subject to A.B.A. accreditation. Consequently, the State Board has determined that an applicant for the Pennsylvania bar examination who

---

[2] Letter reprinted in Appendix A, p. 1a.

is a graduate of an American law school must have been graduated from an A.B.A. approved school.[3]

(c) QUESTIONS PRESENTED BY THIS APPEAL

1. Whether or not Rule 8-C-2 of the Rules Relating to Admission to the Bar of the Supreme Court of Pennsylvania created a conclusive presumption repugnant to the Equal Protection Clause of the Fourteenth Amendment in favor of graduates from law schools accredited by the American Bar Association and against graduates of American schools not so accredited.

2. Whether or not Rule 8-C-2 invidiously discriminates against graduates of American law schools and in favor of graduates from foreign law schools in such manner as to be repugnant to the Equal Protection Clause of the Fourteenth Amendment.

3. Whether or not Rule 8-C-2 is repugnant to the Due Process Clause of the Fourteenth Amendment in that the rule itself, and as applied, is arbitrary and capricious and lacks rational relation to a legitimate exercise of state power.

---

[3]Under the new rules, adopted on June 6, 1977, one of the requirements for admission to the Pennsylvania bar is receipt of a degree from an accredited law school, Rule 203(2). An accredited law school is defined as one accredited by the American Bar Association (Rule 102). The Note to Rule 203, Admission of Foreign Attorneys, reads as follows:

> Note: This rule makes clear that the Board does not have the power to entertain applications from persons who have "read law" in a law office, studied law in the United States in unaccredited law schools, etc.

We point out that only the old rules are applicable to our case, but even were they not, the new rules would be equally defective.

(d) STATEMENT OF THE CASE

Pierre J. Wessel appeals form an order of the Supreme Court of Pennsylvania denying his application to take the Pennsylvania Bar Examination.

Appellant's legal education started at Temple University School of Law, a school accredited by the American Bar Association (A.B.A.). At Temple he completed eighty-one (81) credit hours, normally enough for a degree. But because his average was 1.90 and not 2.00, as required, they would not let him graduate, even though he passed all his courses; nor would they let him stay at Temple another term to permit him to raise his average and, so, to graduate. The faculty senate at Temple, charged with those decisions, heard him for only fifteeen (15) minutes and decided against him, giving him no reason for its decision.

Appellant then applied to many A.B.A. accredited law schools, but was unable to gain acceptance as a transfer student or a new student. A.B.A. rules require that no one be accepted into an accredited school, after attendance at another, unless he was in good standing when he left the first one.[4] Appellant, forced to seek admission into a school not accredited by the A.B.A., sought and gained admission to the International School of Law in the Fall of 1974.[5] That school was accredited by both the District

---

[4]See American Bar Association, *Approval of Law Schools: Standards and Rules of Procedure* (1977), Rule 505.

[5]International School of Law is currently in the process of merging with the George Mason University of Virginia, a state supported institution. Thereafter, it will formally apply for inspection which is the first step towards accreditation by the ABA. In the past, accreditation was denied International because of findings of financial instability.

of Columbia and the Commonwealth of Virginia. International accepted forty-one (41) credit hours from Temple earned by Appellant, requiring him to earn the rest at International. After earning an additional forty-four (44) credit hours, he graduated in May, 1976, with an overall average of 2.78 at International, and was among the 55% who passed the District of Columbia Bar Examination in July, 1976.

In March, 1976, Appellant requested permission to take the Pennsylvania Bar Examination that summer. By letter, dated April 22, 1976, the Board told him it could not act on his request until "regulations and procedures" were developed for determining the meaning of "equivalent" education under Rule 8-C-2, enacted only three months before.

After seven months Appellee denied Appellant's request, referring in a letter, dated December 1, 1976, to the Supreme Court's decision that the equivalency rule only applies to graduates of schools not subject to A.B.A. accreditation.

Ten days later Appellant supplemented his original request advising the Board that since his initial request, he had been admitted to the District of Columbia Bar, and had graduated from International in May, 1976. Appellee, by letter dated December 16, 1976, denied the request "in as much as [Appellant] did not complete the study of law in a law school accredited by the American Bar Association."

Appellant "appealed"[6] the Board's decision to the Supreme Court of Pennsylvania. On March 11, 1977,

[6]Appellant argued below that the review by the Supreme Court of Pennsylvania was not really an appeal in the jurisdictional sense. The Board is an arm of that Court, see 42 Pa. C.S.A. XXVII,

[footnote continued]

without opinion, and without a brief from the Board, the Court denied his appeal with one justice dissenting.

Seeking redress in this Court, he filed a Petition for Writ of Certiorari on June 9, 1977. In it, he asserted that Rule 8-C-2 invidiously discriminated against him and other graduates of non-A.B.A.-accredited domestic law schools.[7] At the request of Appellee, Appellant withdrew his Petition for Writ of Certiorari on October 17, 1977, when told he would have an equivalency hearing, and that the Supreme Court of Pennsylvania would vacate its order of March 11, 1977, denying him a chance to take the bar.

The matter was remanded to the Board, and hearings were held on February 1 and April 14, 1978. At those

and this relationship, it was argued, was like that of a special master to a court. The Board is not covered by the Administrative Agency Law, Title 71, Section 1710.51. The Pennsylvania Supreme Court, in reviewing this matter, has original jurisdiction, and it is not restricted to the limited scope of review of administrative decisions usually made by appellate courts. See In Re Appeal of Edward M. Murphy II From The Decision Of The State Board Of Law Examiners, ___ Pa. ___, ___ ; 393 A.2d 369 (1978), at page 370, fn. 4. This "appeal" or "petition," as it is now called, reached the Supreme Court of Pennsylvania under their rules governing such petitions. See, Rules Relating To Admission To The Bar of the Supreme Court of Pennsylvania, Amended as of January 22, 1976, Rule 14B, at pp. 7-8; as recodified and amended, Pennsylvania Bar Admission Rule, No. 43, Supreme Court Rules, Docket No. 1 (June 6, 1977), Rule 222 at pp. 16-18.

[7]The other questions presented in the earlier Petition were: (1) whether the Pennsylvania Supreme Court denied Petitioner "due process of law" by failing to give a reason for its decision; (2) whether the secret interpretation of administrative rules denied "due process of law"; (3) whether the Board of Law Examiners denied Petitioner "due process of Law" by denying him a hearing or reasoned opinion. See *Wessel v. Pennsylvania State Board of Law Examiners*, Petition for a Writ of Certiorari, No. 76-1757, pp. 2-3.

hearings, Appellant brought forth evidence on the equivalency of his legal education. The Board called only officials of Temple University School of Law to explain the circumstances of their failure to readmit him after his senior year and the significance of certain symbols on his Temple transcript.[8]

Four months later, in August, 1978, the Board denied the petition to take the bar examination reasoning that Appellant did not meet the requirements of Rule 8-C-2 in that he did not graduate from an A.B.A. approved school. They refused to give due consideration to his graduation from International, his membership in the bar of the District of Columbia or his practice of law as bearing on equivalency. See Appendix A, pp. 9a-10a.

Again, Appellant appealed to the Supreme Court of Pennsylvania, filing his brief on December 18, 1978; the Board filed no brief. On January 4, 1979, the Supreme Court of Pennsylvania, one judge dissenting, denied the appeal without argument or opinion. It is from this opinion that Mr. Wessel now appeals to this Court.

---

[8]Mr. Wessel is the only person ever to obtain a full hearing before the State Board of Law examiners, in so far as counsel has determined. Mr. Wessel's hearing occurred pursuant to an agreement by which he withdrew his earlier Petition for Certiorari, that was before this Court. The hearing by the Board, rather that resulting in a full and fair evaluation of his equivalency, resulted instead in the Board's upholding of their original decision on the basis of Mr. Wessel's failure to graduate from a law school accredited by the A.B.A. This was exactly their position before withdrawal of the petition. See Appendix pp. 5a-11a.

RAISING THE FEDERAL QUESTION

Because the Supreme Court of Pennsylvania has not written an opinion in response to either of the two "appeals" taken in this case, the burden is upon the Appellant to demonstrate to this Court that the issues presented, here, as federal questions, were properly presented in the court below. *Street v. New York*, 394 U.S. 576, 581-585 (1969).

When the Supreme Court of Pennsylvania affirmed the decision of its Board of Law Examiners it set up a situation where the validity of the Board's acts were called into question on grounds provided by the Fourteenth Amendment because Appellant urged those grounds in his appeal. Because the rule was being tested by recourse to the federal constitution, that became the measure of the Appellant's rights, creating the federal question.

Even had the court broken its silence and sustained the actions of the Board, and the validity of its own rules on state grounds, alone, those grounds were still to be tested by the Constitution when they affected the rights of an appellant so as to diminish his rights to a level below that minimum guaranteed by the federal constitution. State grounds become immune from comparison with the Constitution only when they give greater rights.[9]

The federal questions for which we seek review were raised at every opportunity. In his first appeal to the

---

[9]See D. E. Wilkins, "New Federalism in Criminal Procedure: State Court Evasion of the Burger Court," 62 Kentucky Law Journal 421-51 (1974); 63 Kentucky Law Journal 873-94 (1975).

Note: "State Constitutional Guarantees as Adequate State Ground: Supreme Court Review and Problems of Federalism," 13 American Criminal Law Review, 737-778 (1976).

Supreme Court of Pennsylvania, Appellant contended that Rule 8-C-2 violated the Fourteenth Amendment by creating irrebutable presumptions in favor of those graduating from A.B.A. accredited schools. (See *In the Matter of Pierre J. Wessel*, No. 327, Misc. Docket No. 21, Appeal from Order of State Board of Law Examiners (filed Feb. 15, 1977), at pp. 6, 8-9).

Again, by Petition for Writ of Certiorari, filed in this Court on June 9, 1977, Appellant urged the federal questions by asking this Court to review, in addition to other questions, the following:

> Whether or not the "equivalency" provision of Rule 8-C-2 of the Rules Relating to Admission To the Bar of the Supreme Court of Pennsylvania, which has been interpreted to apply only to students attending law schools in foreign countries, violates the "equal protection" clause of the Fourteenth Amendment to the United States Constitution, in that it denies the same chance to those in domestic schools, and unfairly discriminates between schools accredited by the A.B.A. and those not so accredited.

Wessel v. Pennsylvania State Board of Law Examiners, No. 76-1577, Petition for Writ of Certiorari To The Supreme Court of Pennsylvania, pp. 2-3.

The federal questions were again put forth as grounds of "appeal" in Appellant's second appeal to the Supreme Court of Pennsylvania. There, he argued that the rule, as amended by the judicial gloss, evidenced by the Appellee's letter dated December 1, 1976, violated the due process clause as it had no rational relation to the end the state sought to achieve--a competent bar. (See *In the matter of Pierre J. Wessel*, No. 327, Misc. Docket No. 21, Appeal

from Order of State Board of Law Examiners (filed Dec. 18, 1978), at pp. 6, 10). This issue was also argued by appellant in his first appeal. (See *In the matter of Pierre J. Wessel* (filed Feb. 15, 1977), supra, at pp. 8-9.)

Further, he argued the denial of due process and equal protection, claiming that the rule erected irrebutable presumptions that resulted in invidious discrimination against people graduating from American law schools, and so discriminated invidiously against Americans and American institutions. (See *In the matter of Pierre J. Wessel*, Dec. 18, 1978, supra, pp. 9-10.) This point was also argued on the earlier appeal. (See *In the Matter of Pierre J. Wessel* (filed Feb. 15,1977), supra, at pp. 9-10.)

The Supreme Court of Pennsylvania, in response to both appeals, decided both without opinion. Each time they upheld the Board's action, and each time one judge dissented.

(e) THE NATURE OF THE CASE AND THE RULINGS BELOW ARE SUCH AS TO BRING THE CASE WITHIN THE JURISDICTIONAL PROVISIONS RELIED ON AND THE CASES CITED TO SUSTAIN JURISDICTION.

In sustaining jurisdiction of this court, *In Re Griffiths*, supra, demonstrates most effectively the right of appeal. It is an appeal from the Supreme Court of Connecticut challenging that state's Practice Rule 8; this shows clearly that a state's rules governing admission to its bar are proper subjects of appeal. That case also concerned conclusive presumptions, as does ours. The case of *Vlandis v. Kline*, supra, is an appeal from the District Court for Connecticut, but it demonstrates the substantiality of the federal question centering around conclusive presumptions made by state law. There, the presumption was

about the status of residency. Granted, both *In Re Griffiths* and *Vlandis* touch on a suspect class and citizenship, respectively, both sensitive areas of a person's life. Nonetheless, a person's occupation is inextricably bound up with his First Amendment rights as well. The analogy between *Vlandis* and our appeal is fitting when it is considered that *Vlandis* was not a challenge to the state's power to classify, but only its power to erect what in substance is a rule of evidence that results in a conclusive classification for those who are touched by the circumstances that such a rule addresses. In our case people from schools in America not accredited by the A.B.A. must face what amounts to a rule of evidence disallowing to them the right to disprove the presumption foisted on them.

The case of *Schlesinger v. Wisconsin*, supra, was an appeal (on a writ of error) involving a state law creating a conclusive presumption about gifts made six years before death. Three justices dissented and would have sustained the tax in question, but all agreed that the classification was measured by the Fourteenth Amendment. The case treated a local law as ours does, again, attesting to the substantiality and the federalness of the questions. *Schlesinger* is about a tax death. Surely it was no more important than the right to pursue an occupation in life.

This Court considered a challenge to an integrated state bar as presenting a substantial federal question in *Lathrop v. Donohue*, supra. There, on direct appeal from a Wisconsin Supreme Court decision upholding an order of that court creating an integrated state bar and ordering payment of an annual fee, this Court held that an appeal was appropriate, at 827. This Court declined to rule on the claim that the Order interfered with petitioner's rights of free association and speech, but instead sustained the rule

under the Fourteenth Amendment. The rule at issue in our case is challenged as exceeding the power to make reasonable regulations and classifications rationally related to a legitimate end, because of the invidious discrimination resulting from distinctions between graduates of domestic and foreign law schools, and because of its arbitrary and capricious nature, violating due process. Where the issue involves the constitutionality of court rules regulating the legal profession, this Court has held that the Fourteenth Amendment issues are weighty enough to justify plenary consideration. *Lathrop* fully sustains the jurisdiction of this Court in our case because it reviewed a situation not unlike our own. Court rules regulating the existence of the bar are closely linked to Court rules regulating who shall be a member of that bar.

Appeal is the proper mode of review of decisions of the highest court of a state, where the state court upholds an act of the state against a challenge based on federal constitutional grounds. In *Rooker v. Fidelity Trust Co.*, supra, this Court denied a challenge to an Indiana Supreme Court decision brought on a bill of equity in federal district court. It held that the district court had no jurisdiction to review such a decision and that the bill was an improper attempt to review by indirect means that could no longer be challenged by the proper mode, a writ of error filed in the Supreme Court itself. [10] This Court reviewed on a writ of error the Indiana Supreme Court decision in *Rooker v. Fidelity Trust Co.*, 261 U.S. 114 (1923), but specifically

---

[10] That the proper mode of review of the actions of this court in this instance is by appeal, and not writ of certiorari, is urged also, in the Respondent's Opposition to the Petition For Writ of Certiorari filed in *Moore v. Supreme Court of South Carolina*, 78-545, p. 2.

held that the record disclosed that the appellant had not raised the federal constitutional issues below, 261 U.S. 114, 117. In the instant case, there can be no questions that appellant sought to protect his federal rights at all stages of the proceedings. The case is one which should be accepted by this Court on appeal in order to resolve the federal constitutional issues raised by Pennsylvania's disposition of Mr. Wessel's request to sit for the bar examination.

Rooker sustains the jurisdiction of this court to hear our case because it affirms that the proper mode of review for ruling on the constitutionality of a state law is by appeal to this court and not by an attempted challenge in a federal court.

THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION.

This appeal presents a substantial federal question. This Court has considered questions concerning the right of people to be admitted to the bar on many occasions, though never one of this nature. That this Court has considered the questions to be the type that are so substantial as to require plenary consideration is demonstrated by the variety of cases taken both on appeal and by writ of certiorari in this area. In *Schware v. Board of Bar Examiners of New Mexico*, 353 U.S. 232 (1957), this Court issued the Writ of Certiorari to review a denial by the Bar Examiners of New Mexico of the applicant's request for admission to the bar, when that denial was predicated on past membership in the Communist Party. In *Konigsberg v. State Bar*, 353 U.S. 252 (1957), the writ was again issued to review denial of admittance to the bar when based on

a finding of bad character predicated on failure to answer questions about political associations; there, the Court deemed the denial of admittance to the bar so substantial that even failure to elaborate clearly, in the lower court, the Constitutional grounds, did not deter the Court from considering the case. 353 U.S. 252, 258. In *Willner v. Committee on Character*, 373 U.S. 96 (1963), the applicant in question sought admission to the bar but was excluded because of adverse reports on his character. The Court granted the writ of certiorari and found the question substantial and "the issue presented . . . justiciable" (373 U.S. 96, 102) despite a record that Mr. Justice Goldberg termed ". . . muddled, and in many respects unsatisfactory." 373 U.S. 96, 108. See also, *In Re Summers*, 333 U.S. 561 (1945), where the Court acknowledged its ability to monitor the acts of a state bar. 333 U.S. 561, 563-569.

While those cases were tinged with the importance of the First Amendment, this Court has reviewed others where the Fourteenth Amendment, alone, stood guard over the appellant's rights. *In Re Griffiths*, supra, came to the Court by way of direct appeal from the Supreme Court of Connecticut. Aliens as a class had been excluded from being lawyers under a rule of practice issued by that state's Superior Court. This Court in holding such to be a violation of "equal protection" found the justifications put forth by the state not such as to overcome the heavy burden thrust on a state seeking to discriminate against a suspect class. Mr. Wessel, appellant here, is not a member of a suspect class, but the substantiality of the federal question is the same because the discrimination practiced under the rule in question is irrational in relation to the end it seeks to achieve. The only difference between the

two cases is the quantum of justification necessary to maintain the rule in question. In many ways the less compelling the interest involved, the more the need for due process and equal protection to guard against the excesses of regulation exercised by bodies that do not need to justify their actions except by reference to the vapors of "rationality."

In this case those who went to American schools not accredited by the A.B.A. are set apart as a class who cannot show they are "equivalent" in skill and readiness to take the bar examination, while those who went to foreign schools will be allowed to make such a demonstration.[11] What, then, is the rational connection between

[11]The Supreme Court of Pennsylvania has permitted graduates of nonaccredited American law schools to sit for the bar examination. In these cases the Board denied applications to take the examination, citing the requirement that applicants have graduated from accredited law schools. Yet the Pennsylvania Supreme Gourt reversed the Board's decisions for no clear reasons. It has acted in an arbitrary and capricious manner because it has allowed a few fortunate individuals to take the bar examination following a factual determination that they had not graduated from an approved school.

Several persons who graduated from the University of Baltimore School of Law (UBSL), before it was first given provisional accreditation by the ABA, in 1972, have been permitted to sit for the exam. In 1964 the Court considered *Appeal Under Rule 15 of Richard Paul Jacob*, (82 Misc. Doc. 13). Mr. Jacob, a 1962 graduate of UBSL, was granted permission to take the bar examination. The Board had denied Jacob's application because he had not graduated form an ABA accredited law school. In 1968, *In the Matter of Appeal of John C. Carlin, Jr.* (181 Misc. Doc. 16), Mr. Carlin, a UBSL graduate and a member of the Maryland Bar was similarly permitted to take the examination. *Accord: In the Matter of Appeal of William J. Mazzola from the Decision of the Board of Law Examiners* (127 Misc. Doc. 19) (1972). Similarly, graduates

[footnote continued]

that rule and the desire for a competent bar—the goal announced as the supporting rationale for the rules?[12] The answer is: none.

Recent cases indicate that the "rational relation" that in the past sustained legislation or rule-making has changed

of the Eastern College of Commerce and Law, an unaccredited law school which merged with the UBSL in 1970, have been permitted to take the examination. *In Re Thomas Meredith Sylk* (376 Misc. Doc. 21) involved a 1966 graduate of Eastern College whose application was denied by the Board because of nonconformity with Rule 8. On June 6, 1977, with no opinion, the Pennsylvania Supreme Court granted Mr. Sylk's petition to sit for the bar examination. This action was taken on the very day they issued new rules confirming the Board's position. *Accord: In Re Appeal of Angelo Andrew Tignanelli* (390 Misc. Doc. 21) (1977). *In Re William P. Keenan* (426 Misc. Doc. 21) (1977) involved a 1972 graduate of the UBSL, who had attended the unaccredited Mount Vernon School of Law from 1969 to 1970 until it merged with UBSL. As he graduated from UBSL before it was accredited, the Board refused him permission to take the examination, but the Supreme Court reversed it.

Neither the Board nor the Supreme Court held any hearing to determine whether these schools provided an education equivalent to that of an accredited law school, or whether the applicants were themselves equivalent. Yet, the Court seems to have decided to favor graduates of these schools.

Finally, on February 24, 1977, in *Edward Humpton Smyrl* (331 Misc. Doc. 21), the Court admitted petitioner to the bar without examination. Mr. Smyrl had attended the University of Pennsylvania Law School between 1922 and 1925 but never graduated. In the intervening years, when the rules permitted it, he took and failed the bar examination seven times. Citing his age and deteriorating eyesight, the Board admitted him.

[12]The announced purpose of rules governing admission to the Bar is that they ". . . are based on state interest in assuring a competent Bar and the protection of the public." *Murphy v. State Bd. of Law Exam. for Com. of Pa.*, 429 F. Supp. 16, 18 (E.D. Pa. 1977); see also, *Ginsburg v. Kovrak*, 392 Pa. 143, 139 A.2d 889, appeal dismissed, 358 U.S. 52 (1958); *Application of Christy*, 362 Pa. 347, 67 A.2d 85, cert. den., *Christy v. Conver*, 338 U.S. 869 (1949); *Walker v. Kahn*, 31 D.C. 620, 86 P.L.J. 173 (1938).

in nature, giving way to a "newer" equal protection and due process. In the past the courts looked only to whether the statute or class in question had a rational basis--any rational basis. If they did, the inquiry ended there. Now, however, the old method of hypothesizing a rationale has given way to scrutiny based on articulated purposes. See Forward, 86 Harv. L. Rev. 1 (1972); and *McGinnis v. Royster*, 410 U.S. 263 (1973); *City of New Orleans v. Dukes*, 427 U.S. 297 (1976); *Mass. Board of Retirement v. Murgia*, 427 U.S. 307 (1976).

There are other reasons for taking jurisdiction of this case. In a sense, this is our first and only appeal. Since the Supreme Court of Pennsylvania made the rule we attack, their "review" was only a reaffirmation of their own work. Certainly, the court must have thought their actions were constitutional. If this Court does not take jurisdiction, there will be left standing the legal equivalent of what the astrophysicists call a "black hole"--a body so dense not even light can escape, a completely self-contained world that cannot be examined or challenged. The Supreme Court of Pennsylvania will emerge as a sovereign uncontrolled by the United States Constitution, free to carry out its will as to who can be an attorney.

It is significant, too, that when Mr. Wessel first applied to take the bar examination, the Board of Law Examiners held up his application, pending interpretation of the rule by the only body reviewing the Board's acts. This incestuous process leaves a person with no genuine appeal in any state or federal court sitting in Pennsylvania.[13]

[13] *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), provides that the only federal forum in which review of a decision of the highest court of a state is available is this Court. *Rooker, supra*, bars the federal district courts from holding any proceedings [footnote continued]

Recently, this court has treated the rights of foreigners with great attention, holding for the most part, that they are equal to the citizen's in many areas of American life. See *Graham v. Richardson*, 403 U.S. 365 (1971), (overruling a 15 year residency requirement for foreigners seeking welfare benefits); *In Re Griffiths, supra* (striking down exclusion of resident aliens from the practice of law); *Examining Board of Engineers v. Flores de Otero*, 426 U.S. 572 (1976), (exclusion of aliens from the profession of engineering); *Sugarman v. Dougall*, 413 U.S. 634 (1973), (general exclusion of all aliens from all state civil service jobs); *Nyquist v. Mauclet*, 432 U.S. 1 (1977), (forbidding exclusion of aliens from securing loans from the state for higher education).

The substantiality of the questions presented are not alone tested merely by the numbers they affect, though many will undoubtedly be affected by what the court does here.[14] These questions are substantial because they affect the form of our legal profession.

which have the effect of appealing a state supreme court decision. It holds that such a challenge comes within the purview of the appellate jurisdiction of this Court. If an injunction were sought in federal district court, to order the Pennsylvania Supreme Court to admit Mr. Wessel, the district court would likely dismiss the action on the grounds of abstention. Under *Burford v. Sun Oil*, 319 U.S. 315 (1943), a federal court will avoid exercising jurisdiction and will dismiss a case in order to avoid needless conflict with the administration by a state of its own affairs. On the difficulties of securing federal review of state court actions with reference to bar admissions see, too, *Doe v. Pringle*, 550 F.2d 596 (10th Cir. 1976); and *Murphy v. State Board of Law Examiners for Commonwealth of Pennsylvania, supra*, where a suit in federal court challenging the rules for admission was dismissed under 12b(6)-Federal Rules of Civil Procedure.

[14] See *Wessel v. Pennsylvania State Board of Law Examiners*, Petition for Writ of Certiorari, 76-1757, pp. 13-15.

Americans, as a practical matter, should have at least as good a chance as foreigners to become lawyers in their own country. What Rule 8-C-2, and its successor, do, is give foreigners a better chance to be attorneys, and to give more credence to the evaluation of a foreign nation than to that of a sister jurisdiction. What we urge is devoid of nativist intent. We seek only to share the equality of treatment that this court has mandated for all who are within our borders.

CONCLUSION

For the reasons stated herein, Appellant urges that the questions presented are substantial and of public importance, being fully cognizable under Title 28, U.S.C., Section 1257(2), and therefore require plenary consideration, with briefs on the merits and oral argument for their resolution.

Respectfully submitted,

DAVID J. ONTELL
510 Fifth Street, N.W.
Washington, D.C. 20001
(202) 638-1696
Attorney for Appellant

CERTIFICATE OF SERVICE

This is to certify that I have mailed three (3) copies of the foregoing Jurisdictional Statement, postage prepaid, to the Appellee, Pennsylvania State Board of Law Examiners, 2010 Two Girard Plaza, Philadelphia, Pennsylvania 19102, this 4th day of April, 1979.

DAVID J. ONTELL

APPENDIX

APPENDIX

COMMONWEALTH OF PENNSYLVANIA
STATE BOARD OF LAW EXAMINERS
2010 Two Girard Plaza
Philadelphia, Pa. 19102

December 1, 1976

In Reply Refer to
File No. 27880

Mr. Pierre Jacques Wessel
7816 Conwell Road
Philadelphia, Pa. 19118

RE: Permission to Sit for Pennsylvania Bar Examination
Pennsylvania Supreme Court Rule 8-C-2

Dear Mr. Wessel:

The Supreme Court of Pennsylvania has indicated to the State Board of Law Examiners that the "equivalency" rule applies only to graduates of law schools which are not subject to A.B.A. accreditation. Consequently, the State Board has determined that an applicant for the Pennsylvania bar examination who is a graduate of an American law school must have been graduated from an A.B.A. approved school.

Very truly yours,

/s/ SUSAN L. ANDERSON
Secretary

SLA:faw

P.S. In due course you will receive a refund check in the amount of $30.00.

COMMONWEALTH OF PENNSYLVANIA
STATE BOARD OF LAW EXAMINERS
2010 Two Girard Plaza
Philadelphia, Pa. 19102

December 16, 1976

In Reply Refer to
File No. 27880

Pierre Jacques Wessel, Esquire
7816 Conwell Road
Philadelphia, Pa. 19118

Dear Mr. Wessel:

Your letter of December 10, 1976 was presented to the Board on Tuesday, December 14, 1976.

The Board denied your request, inasmuch as you did not complete the study of law in a law school accredited by the American Bar Association even though you have been admitted to the Bar of the District of Columbia.

Very truly yours,

/s/ SUSAN L. ANDERSON
Secretary

SLA:faw

SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT
Philadelphia, 19107

SALLY MRVOS
Protonotary
LAURA E. LITCHARD
Deputy Prothonotary

March 15, 1977

George J. O'Neill, Esq.
Suite 1600-Broad Locust Building
1405 Locust Street
Philadelphia, Pa. 19102

Re: In the Matter of the Appeal of
Pierre J. Wessel, Esquire from the
Decision of the State Board of Law
Examiners
No. 327, Miscellaneous Docket No. 21

Dear Mr. O'Neill:

This is to advise that the following Order has been endorsed on the Appeal from the Order of the State Board of Law Examiners filed in the above captioned matter:

"March 11, 1977.

Denied.

By the Court.

Mr. Justice Manderino dissents."

Very truly yours,

SM/c
cc: Pierre J. Wessel, Esq.
Susan L. Anderson, Esq.

/s/ SALLY MRVOS
Prothonotary

SUPREME COURT OF PENNSYLVANIA

In the Matter of the Appeal	:	
of Pierre J. Wessel, Esquire	:	No. 327
from the Decision of the	:	Misc. Docket No. 21
State Board of Law Examiners	:	

ORDER

AND NOW, this 7th day of October, 1977, with the agreement of counsel for the parties, it is hereby

ORDERED that:

1. This Court's order of March 11, 1977 is vacated and

2. The matter is remanded to the State Board of Law Examiners for a hearing pursuant to former Rule 8(c)(2) of the Rules of this Court on the question whether appellant has "acquired a legal education which in the opinion of the State Board is the equivalent" of having completed the study of law in a law school accredited by the American Bar Association.

By the Court

/s/ M. J. Eagen
Chief Justice

COMMONWEALTH OF PENNSYLVANIA
STATE BOARD OF LAW EXAMINERS

In the Matter of: *Pierre Jacques Wessel, Esquire*

HISTORY

On November 11, 1969, the applicant filed his application to this Board for registration as a law student and in due course the registration was completed.

On February 27, 1973, he filed an application for permission to sit for the Bar Examinations to be held on July 24-25, 1973, setting forth therein, inter alia, his attendance at Temple University Law School and his expectation of receiving a J.D. degree on May 29th of that year.

In February of 1976, he filed an application to take the Bar Examinations to be held on July 27-28, 1976, reiterating the periods he attended Temple and also that he was a student at the International School of Law, with the expectation of receiving a J.D. degree in May of 1976.

On March 17, 1976, the applicant was advised by the Board that since the ISL was non-accredited, a special application based on that fact would be necessary. On March 24, 1976, he filed such an application based on the Supreme Court amended Rule of January 22, 1976 and further that ISL was in the process of being accredited. ISL has never been accredited.

On April 22, 1976, he was advised by the Board that there would be a delay in passing on his application pending the Board's developing regulations and procedures to determine application of the amended rule.

On December 1, 1976, the applicant was advised that the "equivalency" provided for in the amended rule applied only to Law Schools not subject to ABA accreditation and his application fee was in due course refunded.

On December 10, 1976, he requested a reconsideration, basically on the grounds that he was allowed to sit for the Virginia and D.C. Bar Exams and had, in fact, passed the D.C. Bar Exams and was already a member of the D.C. Bar.

On December 16, 1976 he was advised that the Board, at its meeting on December 14, 1976, denied his request on the ground that he had not completed the study of law in an accredited Law School.

On January 11, 1977, he served notice on the Board of his intention to appeal. On January 17, 1977, the Board notified the Supreme Court of its decision, and at the same time, sending a copy of the notice to the applicant.

On March 11, 1977, the Court denied the applicant's request.

On June 9, 1977, the applicant filed with the Supreme Court, a petition for a Writ of Certiorari, which was later withdrawn by stipulation and the Supreme Court on October 17, 1977, vacated its Order of March 11th and remanded the matter to this Board for hearing on the question of whether the applicant had acquired a legal education, which in the opinion of the Board, was the equivalent of having completed the study of law in a Law School accredited by the ABA.

DISCUSSION

The amended Supreme Court Rule of January, 1976, 8(c)(2), provides:

> " . . . To qualify for the Bar Examination, an applicant . . . . shall have completed the study of law in a Law School accredited by the ABA, or have acquired a legal education, which in the opinion of the Board is the equivalent."

Since the present application was filed with the Board in February of 1976, the above mentioned Rule is applicable.

It has been the practice of the Board to consider the question of equivalency, as later codified in the new rules (See Footnote), only on applicants who have achieved a regular education beyond the jurisdiction of the ABA and therefor to require domestic applicants to graduate from ABA accredited Law Schools.

The applicant in the present case, at all times was a resident of the State of Pennsylvania and attended Temple University Law School, a duly accredited institution, for a full six semesters, or three full academic years, but failed to receive the J.D. degree as anticipated when he filed the 1973 application.

In February of 1978, the applicant appeared before the board at the scheduled hearing with his Counsel, described his attendance at Law School, offered as evidence his detailed scholastic record at Temple, which on its face showed no failures.

The oral testimony of the applicant indicated that he had not failed in any of the courses. His explanation of his failure to get his degree was that he was confused in the last semester and was not fully aware of the requirements until the late Spring of 1973, his graduating year, when he was finally informed that since he had not attained an over-all average of 2.00 the degree would not be granted.

In view of the foregoing, it was not clear to the Board whether he had "completed" the study of law as required by the rule, hence another hearing was scheduled and held on the 14th day of April, 1978, before the full Board, and was attended by the applicant and his Counsel.

In that hearing, Professor Hachenburg, of the Temple Law School, appeared with the applicant's file. Professor Hachenburg testified that to graduate, the applicant would have had to have a cumulative average of 2.00 "which really means that the passing grade is "C" (R.P.6). The Professor further testified that although the applicant never received an "F", he did receive "D's" which are, in fact, failing grades." (R.P. 6)

The method of grading and the standards set by the Law School were brought to the knowledge of the applicant by means of the school catalog on entrance in the Fall of 1969. (He was on a leave of absence from the Spring and Fall semesters of 1970).

At the end of the first academic year, he was advised by Assistant Dean, by letter of July 27, 1971, that he would be entering the second year on probation for his failure to achieve an accumulated

average of 2.00 and that the average for the ensuing year would have to be at least 2.09.

At the end of the second academic year, by letter of Assistant Dean, Ruth Kovnat, dated July 27, 1972, he was notified of his failure to achieve the required average and that ordinarily he should be dropped for poor scholarship. It was testified that only by a special arrangement and only on an experimental basis, he would be allowed to continue into the third academic year on probation and again warned of the necessity to obtain an accumulated average of 2.00 or be dropped. (R.P. 14).

On April 13, 1973, realizing his failure to meet the requirements for graduation with the Spring 1973 class, he petitioned the School Administration Committee to in effect, waive the requirements previously laid down. The petition was denied. Professor Hachenburg testified:

> " . . . The feeling of the Committee was that Mr. Wessel had received unusual consideration in his course at the Law School and we felt that at some point, the line had to be drawn and the student must meet the requirements.

The applicant then petitioned to be heard by the full faculty; and after a hearing on May 24, 1973, the prayer of the petition was denied and he was notified by letter dated June 1, 1973. He was then dropped for poor scholarship.

It is apparent that the applicant has not completed the study of law in the Temple Law School, a duly accredited Law School [sic]. The Appellant's record at Temple Law School and the International School of Law does not satisfy the requirement of

Rule 8(c)(2) and is not the equivalent of a legal education acquired after having completed the study of law in a Law School accredited by the ABA.

The applicant has testified before this Board about his activities as a practicing lawyer in another jurisdiction and his association with other practicing lawyers. The Board cannot consider the practical experience as an educational equivalent since it no longer gives credit to the reading of the law in a law office or similar activity.

The applicant's request for permission to sit for the Pennsylvania Bar Examinations is denied.

/s/ James W. Scanlon
/s/ Desmond J. McTighe
/s/ John W. English, Sr.
/s/ Justin M. Johnson
/s/ Anthony S. Minisi

Footnote:

On June 6, 1977 the Supreme Court amended and redesignated their Rules of Court 7 thru 16 which provides, interalia:

Rule 203—"The general requirements for admission to the Bar of this Commonwealth are . . .

(2) Receipt of an earned Bachelor of Laws or Juris Doctor Degree form an accredited Law School. See Rule 205 (relating to admission of Foreign Attorneys) for standards applicable to graduation from Foreign Law Schools."

Rule 205 – "Admission of Foreign Attorneys"

The Board, under such standards, rules and procedures as it may prescribe, may extend the provisions of Rule 203 (relating to the admission of graduates of accredited institutions)

to any applicant who has completed the study of law in a law school which at the time of such completion was not located within the geographical area encompassed by the accreditation activities of the American Bar Assocation and who has been admitted to practice law in and is in good standing at the bar of a foreign country, as evidenced by a certificate from the highest court or agency of such foreign country having jurisdiction over admission to the bar and the practice of law.

Note: This rule makes clear that the Board does not have the power to entertain applications from persons who have "read law" in a law office, studied law in the United States in unaccredited law shools, etc.

SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT
456 City Hall
Philadelphia, Pa. 19107
(215) 686-3581/84

January 8, 1979

SALLY MRVOS
Prothonotary
CATHERINE E. LYDEN
Deputy Prothonotary

John Z. Noyes, Esquire
1901 Pine Street
Philadelphia, PA 19103

David J. Ontell, Esquire
510 Fifth Street, N.W.
Washington, D.C. 20001

In the Matter of: Appeal of Pierre J. Wessel, Esquire, from the Decision of the State Board of Law Examiners
Petitioner: Pierre J. Wessel
No. 327 Miscellaneous Docket No. 21

Gentlemen:

This is to advise you that the following Order has been endorsed on your Appeal from Order of State Board of Law Examiners, filed in the above-captioned matter:

"1/4/79

Denied.

By the Court.

Mr. Justice Manderino dissents."

Very truly yours,

/s/ SALLY MRVOS
Prothonotary

SM:bl

cc: Susan L. Anderson, Esquire

IN THE
SUPREME COURT OF THE COMMONWEALTH
OF PENNSYLVANIA
[Filed: March 15, 1979]

Pierre J. Wessel, Esquire, Appellant

v. No. 327 Misc. Docket 21

Pennsylvania State Board of Law Examiners, Appellee

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Pierre J. Wessel the appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgement of the Supreme Court of the Commonwealth of Pennsylvania affirming the order of the Pennsylvania State Board of Law Examiners, entered on January 4, 1979.

This appeal is taken pursuant to 28 U.S.C. 1257(2).

/s/ David J. Ontell
David J. Ontell, Esquire
Counsel for Appellant

CERTIFICATE OF SERVICE

This is to certify that I have mailed a copy of the foregoing NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES, postage prepaid, to the Pennsylvania State Board of Law Examiners, 2010 Girard Plaza, Philadelphia, Pennsylvania, this 15th day of March, 1979.

/s/ David J. Ontell
David J. Ontell, Esquire
510 Fifth Street, N.W.
Washington, D.C. 20001

Supreme Court, U. S.
FILED
MAY 7 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978 No. 78-1516

PIERRE J. WESSEL, *Appellant*

v.

PENNSYLVANIA STATE BOARD OF LAW EXAMINERS, *Appellee*

MOTION TO DISMISS OR AFFIRM

Appeal from the Judgment of the Supreme Court of Pennsylvania at No. 327, Miscellaneous Docket No. 21 Order dated January 4, 1979

Jonathan Vipond, III, Esquire
Attorney for Appellee,
Pennsylvania Board of
Law Examiners

1414 Three Penn Center Plaza
Philadelphia, Pa. 19102
(215) LO 7-3071

THE LEGAL INTELLIGENCER, 66 NORTH JUNIPER STREET, PHILA., PA. 19107 (215) 561-4050

TABLE OF CONTENTS

	Page
Motion to Dismiss or Affirm	1
Statement	2
Argument	4
Conclusion	5

TABLE OF CITATIONS

Cases:

Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232, 239 (1957) 4

In Re Griffiths, 413 U.S. 717 (1973) 4

Murphy v. Pennsylvania State Board of Bar Examiners, No. 78-1048 4

Miscellaneous:

Pennsylvania Rules of the Supreme Court, Rule 8(c)(2) 2, 3, 4

Pennsylvania Bar Admission Rules, Rule 203 2

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978 No. 78-1516

PIERRE J. WESSEL, *Appellant*

v.

PENNSYLVANIA STATE BOARD OF LAW EXAMINERS, *Appellee*

MOTION TO DISMISS OR AFFIRM

Appeal from the Judgment of the Supreme Court of Pennsylvania at No. 327, Miscellaneous Docket No. 21 Order dated January 4, 1979

MOTION TO DISMISS OR AFFIRM

The Appellee, Pennsylvania Board of Law Examiners, moves this Court to dismiss the appeal in the above entitled case or, alternatively, to affirm the decision of the Supreme Court of Pennsylvania on the ground that this appeal fails to present any substantial federal questions.

STATEMENT

This is a direct appeal from a decision of the Supreme Court of Pennsylvania upholding an order of the Pennsylvania Board of Law Examiners which denied the Appellant's application to sit for the Pennsylvania bar examination.

In Pennsylvania, applications for admission to the state bar are initially passed upon by the Board of Law Examiners which evaluates the applications under standards contained in rules promulgated by the Pennsylvania Supreme Court. Applicants are given the right to petition the Supreme Court for review of any adverse decision of the Board.

The Appellant, Pierre J. Wessel, originally applied to sit for the Pennsylvania bar examination on February 27, 1973. However, he did not sit for the bar at that time because he failed to satisfactorily complete his studies at Temple University Law School, a law school accredited by the American Bar Association. In February of 1976, Mr. Wessel again applied to take the bar examination, stating that he was a student at the International School of Law, a non-accredited law school. This application was eventually denied because of Mr. Wessel's failure to comply with Rule 8(c)(2) of the Pennsylvania Rules of the Supreme Court which required that applicants for the state bar "have completed the study of law in a law school accredited by the American Bar Association; or . . . have acquired a legal education which in the opinion of the State Board is the equivalent." The equivalency provision of Rule 8(c)(2) had been interpreted by the Pennsylvania Supreme Court to apply only to graduates of foreign law schools. (This interpretation has since been made explicit with the adoption by the Pennsylvania Supreme Court of Rule 203 of the Pennsylvania Bar Admission Rules).

Mr. Wessel filed a petition in the Supreme Court of Pennsylvania seeking review of the Board's denial of his application but his petition was denied by that Court. He then sought a writ of certiorari in this Court but that petition was later withdrawn by stipulation when the Pennsylvania Supreme Court vacated its order and remanded the case to the Board for an "equivalency" hearing.

The Board then held a hearing in which it considered Mr. Wessel's contention that he had actually completed the study of law at Temple Law School. The Board rejected Mr. Wessel's contention and again denied his application to take the bar because of failure to comply with Rule 8(c)(2). Mr. Wessel's petition to the Pennsylvania Supreme Court for review of this determination was denied by order dated January 4, 1979. It is this order which is the basis of the present appeal.

ARGUMENT

Mr. Wessel contends that Rule 8(c)(2) denied him his constitutional rights to due process and equal protection. However, it is clear that a state can set qualifications for admission to its bar as long as the qualifications have a rational connection to the fitness or capacity of applicants to practice law and do not involve an invidious discrimination. *Schware v. Board of Bar Examiners of the State of New Mexico*, 353 U.S. 232, 239 (1957); *In Re Griffiths*, 413 U.S. 717 (1973).

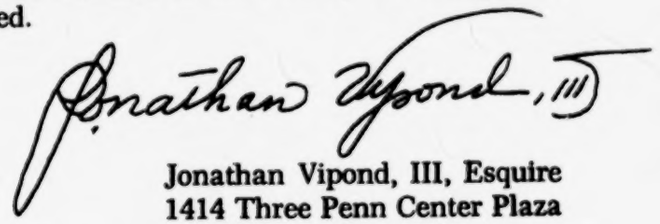
The requirement set down by the Pennsylvania Supreme Court that all applicants for the state bar graduate from ABA-accredited law schools is rationally related to ensuring the competency of the members of the state bar. Furthermore, the differentiation between graduates of accredited law schools and graduates of non-accredited law schools is certainly not an invidious one.

Mr. Wessel also argues that his right to equal protection is violated by the fact that, under the Pennsylvania rules, graduates of foreign law schools may demonstrate the equivalency of their education to the education in an ABA-accredited law school while students at domestic law schools are not permitted to do this. However, the distinction between foreign and domestic law schools is also clearly reasonable because foreign law schools are outside of the geographical jurisdiction of the ABA.

This Court has only recently dismissed an appeal challenging the same Pennsylvania rule—*Murphy v. Pennsylvania State Board of Bar Examiners*, No. 78-1048, Order dated February 20, 1979.

CONCLUSION

For the foregoing reason, the Appellee, Pennsylvania Board of Law Examiners, moves that this appeal be dismissed or that the decision of the Pennsylvania Supreme Court be affirmed.



Jonathan Vipond, III, Esquire
1414 Three Penn Center Plaza
Philadelphia, Pa. 19102
Attorney for Appellee

Supreme Court, U. S.
FILED
MAY 18 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-1516

PIERRE J. WESSEL,

Appellant,

v.

PENNSYLVANIA STATE BOARD OF LAW EXAMINERS,

Appellee.

ON APPEAL FROM
THE SUPREME COURT OF PENNSYLVANIA

REPLY BRIEF

DAVID J. ONTELL
510 Fifth Street, N.W.
Washington, D.C. 20001
(202) 638-1696
Attorney for Appellant

Washington, D.C. • THIEL PRESS • (202) 638-4521

TABLE OF CONTENTS

Page

REPLY BRIEF 1

ARGUMENT 1

CONCLUSION 5

CERTIFICATE OF SERVICE 6

TABLE OF AUTHORITIES

Cases:

In Re Griffiths, 413 U.S. 717 (1973) 4, 5

Murphy v. Pennsylvania State Board of Law Examiners, No. 78-1048 3

Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 252 (1957) 4

Rules:

Rules Relating To Admission to the Bar of the Supreme Court of Pennsylvania, amended as of January 22, 1976:

Rule 8-C-2 . . . . . 2, 3

Rules Relating To Admission to the Bar of the Supreme Court of Pennsylvania, adopted June 6, 1977:

Rule 205 3

Rule 222(a) 4

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-1516

PIERRE J. WESSEL,

Appellant,

v.

PENNSYLVANIA STATE BOARD OF LAW EXAMINERS,

Appellee.

ON APPEAL FROM
THE SUPREME COURT OF PENNSYLVANIA

REPLY BRIEF

In answer to Appellee's Motion to Dismiss or Affirm, Appellant submits the following Reply Brief urging this Court to take jurisdiction on the ground that there is a substantial federal question.

ARGUMENT

Appellee's Motion to Dismiss or Affirm presents no arguments supporting the argument that this appeal fails

to present substantial federal questions. Their statement and argument present numerous errors about Mr. Wessel's education and his contentions in the lower court.

As to Mr. Wessel's education, we have never contended he had actually completed the study of law at Temple. Such a statement is a gross distortion and misunderstanding of Mr. Wessel's contentions. If this were his contention he would never have delayed 3 years, and gone to law school 2 more years before making a second request to take Pennsylvania's test. His contention has always been that the totality of his education and experience give him "equivalency." Our understanding was that he would be evaluated as if he were a graduate of a foreign Law School. All concerned knew he did not graduate from Temple, and all knew that he did not rely on his attendance at Temple, alone, to establish his "equivency."

Mr. Wessel graduated from International School of Law, a school accredited by the State of Virginia and the District of Columbia, though not the A.B.A. He depended on this as well as his work experience and bar membership to demonstrate his "equivalency," just as any graduate of a foreign law school would have had to do. Mr. Wessel was given no chance to demonstrate "equivalency" of legal education in this manner. Instead, the Board, ignoring its agreement, applied Rule 8-C-2 to Mr. Wessel in the same way they had applied it before his Petition for Writ of Certiorari to this Court. The only difference was the use of a "hearing" to sanctify its action.

The assertion that foreign law schools are outside A.B.A. jurisdiction assumes and infers that the geographical jurisdiction of the A.B.A. is conferred by some internal force of the A.B.A. that subordinates others to it. Of course, it is only each state that chooses the A.B.A.

as a vehicle for convenience. Unlike this Court, which can impose itself from above by virtue of power greater than the court below it, the A.B.A. gets its "power" from those that voluntarily accede to its standards. Because its power is self assumed, it can expand and collapse its "jurisdiction" as is necessary to its own purposes, while having power no greater than others give to it. The organization sustains what powers it does have by correctly reading the desires of its constituents and reacting to their satisfaction. If the A.B.A. wanted to evaluate foreign law schools, and so take "jurisdiction," then that would be in their purview, too.

While the Board of Law Examiners is guided by rules set down by the Supreme Court of Pennsylvania, these rules are subject to interpretation on a case by case basis; frequently, the Court makes exceptions based on criteria outside the rules or no criteria at all. The interpretation of Rule 8-C-2, here, was not explicit at the time of the application, and is irrational when related to the purpose for which it was enacted. The contentions of the Board about the rational relation of the state rules to competency are exactly what is at issue, here. This Court is urged not to accept, in this motion, Appellee's conclusory statements as dispositive of the question.

The Board's contention that *Murphy v. Pennsylvania State Board of Law Examiners,* No. 78-1048, was an appeal of the same rule is not supported by the record. That case did not address itself to Rule 8-C-2 or its successor, Rule 205,[1] directly, but instead, sought to

[1] Rule 205 says:

The Board, under such standards, rules and procedures as it may prescribe, may extend the provisions of Rule 203 (relating to the admission of graduates of accredited institutions) to any applicant who has completed the study of law

[footnote continued]

argue denial of due process and equal protection because others, though unqualified, were allowed entry into the examination under Rule 222(a),[2] permitting those otherwise unqualified to take the examination. Neither the same rule nor the same grounds were advanced. That appeal sought to attack *acts* not reviewed in the court below. This appeal directly attacks a *rule* that was reviewed below.

That this case presents substantial federal questions is demonstrated by the cases cited by the Appellee. The first, *Schware v. Board of Bar Examiners of the State of New Mexico,* 353 U.S. 252 (1957), reviewed that state's rejection of an applicant on grounds related to character. The second, *In Re Griffiths,* 413 U.S. 717 (1973), examined Connecticut's right to exclude foreigners from law practice. Here, it is Americans, or at least those likely to be Americans—those going to certain American law schools—that are facing exclusion. If this Court decides the issue, the implication for non-A.B.A. accredited law

in a law school which at the time of such completion was not located within the geographical area encompassed by the accreditation activities of the American Bar Association and who has been admitted to practice law in and is in good standing at the bar of a foreign country, as evidenced by a certificate from the highest court or agency of such foreign country having jurisdiction over admission to the bar and the practice of law.

Note: This rule makes clear that the Board does not have the power to entertain applications from persons who have "read law" in a law office, studied law in the United States in unaccredited law schools, etc.

[2] Rule 222(a) says:

(a) General rule.—Except as prescribed by Rule 221 (relating to marking of bar examination papers) any final determination of the Board may be reviewed by the Supreme Court.

schools and their students will be substantial, indeed. If the Court upholds Mr. Wessel's right to take the bar examination then thousands of others will have a right to do so. If the Court decides otherwise, then non-A.B.A. schools could face doom. This case has the potential for affecting substantially more people than even *Griffiths.*

CONCLUSION

For the foregoing reasons, the Appellant, Pierre J. Wessel, Esquire, prays this Court deny the Appellee's motions, and take jurisdiction of this case.

Respectfully submitted,

DAVID J. ONTELL
510 Fifth Street, N.W.
Washington, D.C. 20001
(202) 638-1696
Attorney for Appellant

CERTIFICATE OF SERVICE

This is to certify that I have mailed three (3) copies of the foregoing Reply Brief, postage prepaid, to Jonathan Vipond, III, Esquire, 1414 Three Penn Center Plaza, Philadelphia, Pennsylania 19102, Attorney for Appellee, this 18th day of May, 1979.

DAVID J. ONTELL